

NO. NHH CV 23 6018286	:	SUPERIOR COURT
	:	HOUSING SESSION
CHAPEL APARTMENTS LLC	:	
	:	J.D. OF NEW HAVEN
vs.	:	AT NEW HAVEN
SANDRA JEAN-CLAUDE ET AL	:	JANUARY 20, 2023

MOTION TO DISMISS

Defendant tenant Sandra Jean-Claude moves to dismiss this action for lack of subject matter jurisdiction. In support thereof, she states:

1. The notice to quit and summons and complaint were not properly served in this action. As set forth in the affidavit attached hereto, both the notice to quit, and later the summons and complaint, were left on the apartment door, leaning against the doorknob, in a common hallway that used and accessed by at least six tenants on that floor alone.

2. Leaving a notice to quit and a summons leaning against the doorknob to the apartment that is publicly accessible does not constitute proper abode service, and thus deprives the court of jurisdiction.

WHEREFORE, the Court lacks jurisdiction and this action must be dismissed.

ORAL ARG. REQUESTED
TESTIMONY REQUIRED

ORDER

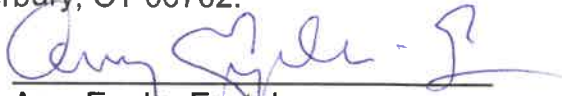
The foregoing Motion having been considered by the Court, it is hereby
ORDERED: GRANTED/DENIED.

BY THE COURT,

JUDGE/CLERK/ASSISTANT
CLERK

CERTIFICATION

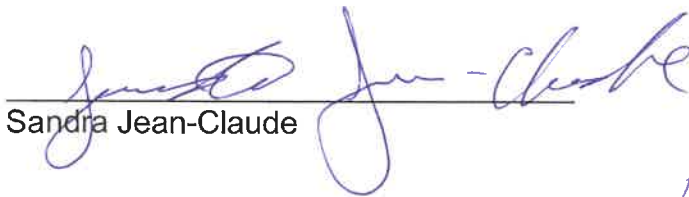
This is to certify that on the 20th day of January, 2023, a copy of the
foregoing was mailed, postage pre-paid, to Atty. Eliana Schachter, Weisman Law
Firm LLC, 25 Central Ave., PO Box 260, Waterbury, CT 06702.


Amy Eppler-Epstein

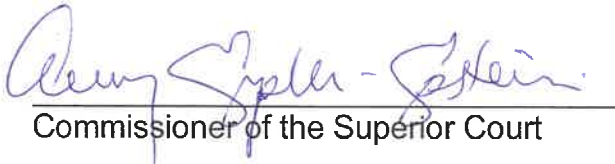
AFFIDAVIT OF SANDRA JEAN-CLAUDE

I, Sandra Jean-Claude, being duly deposed and sworn, state:

1. Both the notice to quit, and the summons and complaint in this action were served in the same manner: they were left on the apartment door, leaning against the doorknob.
2. The door to the apartment is in a common hallway, which is shared by a total of 6 apartments just on our floor, and many other tenants who pass by our apartment door on the way to other floors.
3. There is plenty of room to slide papers under the door of the apartment, but that was not done here. Also, people were home in my apartment on the day that the summons and complaint was served, no one reported ever hearing anyone knock on the door or try to serve them papers in person; we did not discover the papers until my husband and I came home from work that day, and saw the papers leaning against the doorknob and the door.


Sandra Jean-Claude

Signed and sworn to before me this 18th day of January, 2023.


Commissioner of the Superior Court

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MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO DISMISS

FACTS

As set forth in the affidavit attached to this Motion, the notice to quit in this action left leaning against the doorknob of the apartment door, in a common hallway shared by six apartment and fully accessible to other tenants in the building. It was not delivered to the abode in which the tenant resides. The summons and complaint was served in the same manner, and similarly was not served either in hand or by proper abode service. As set forth in the affidavit, there were people at home all day on the day during which the notice to quit was served which would have allowed for in hand service; and there is adequate space for papers to be passed under the apartment door; yet neither of these methods of proper service were utilized.

ARGUMENT

I. FAILURE TO SERVE THE NOTICE TO QUIT OR SUMMONS AND COMPLAINT BY PROPER ABODE SERVICE DEPRIVES THE COURT OF JURISDICTION

A. PROPER SERVICE OF A NOTICE TO QUIT AND SUMMONS AND COMPLAINT IS A JURISDICTIONAL NECESSITY TO A SUMMARY PROCESS ACTION.

It is well settled that statutory service of a valid notice to quit is a condition precedent to the bringing of a summary process action. Bridgeport v. Barbour-Daniel Electronics, Inc., 16 Conn. App. 574, 582 (1988), citing O'Keefe v. Atlantic Refining Co., 132 Conn. 613, 622 (1946). Precisely because the plaintiff lessor may obtain his/her remedy in a summary fashion, the summary process statute must be narrowly construed and strictly followed and the landlord must prove its compliance with all relevant preconditions set by law for terminating a lease. Jefferson Garden Associates v. Greene, 202 Conn. 128, 143 (1987), Jo-Mark Sand & Gravel Co. v. Pantanella, 139 Conn. 598, 600-601 (1953).

Conn. Gen. Stat. §47a-23(c) provides that a notice to quit "shall be delivered to each lessee or occupant or left at his place of residence . . . by a proper officer . . ." Conn. Gen. Stat. §52-57 prescribes and limits the manner in which civil process must be served upon individuals, thus defining proper manner of service of a notice to quit. This section provides that ". . . process in any civil action shall be served by leaving a true and attested copy of it, including the declaration or complaint, with the defendant, or at his usual place of abode, in this state."

Where a particular method of service is required by statute, that method must be followed. Cohen v. Bayne, 28 Conn. Sup. 233, 236 (1969), citing FitzSimmons v. International Association of Machinists, 125 Conn. 490, 493 (1939). Failure to follow the prescribed methods of service is a jurisdictional defect: "Unless service of process is made as the statute prescribes, the court to which it is returnable does not acquire jurisdiction." Hyde v. Richard, 145 Conn. 24, 25 (1958). See also Practice Book §10 -30.

B. SERVICE BY LEAVING THE NOTICE TO QUIT AND THE SUMMONS AND COMPLAINT LEANING AGAINST THE DOORKNOB IN A PUBLIC HALLWAY IS NOT PROPER ABODE SERVICE.

In the present case, the notice to quit was neither personally served on the defendant, nor properly left at her usual place of abode. The notice to quit was instead leaning against the doorknob of the apartment door, in a public hallway, accessible to other tenants in the building including all six of the apartments that are on the same floor and utilize that hallway. .

In Connecticut, a process server normally makes abode service by sliding process "under the door of the abode, if practicable, and . . . push[ing] it as far under as possible . . . A mailslot in the door is frequently used but not a mailbox even if adjacent to the door." 1 Stephenson, Connecticut Civil Procedure, (2d.Ed.) §24, pp. 79-80 (1970). If the abode is in a multiple-residence building, as is the defendant's in this action, "process must be left at the door of the defendant's apartment, not at the outside door of the building . . ." id., citing Clover v. Urban, 108 Conn. 13 (1928).

Here, there was clearly a failure to make service on the abode by sliding process under the defendant's apartment door. Nor was the notice hand

delivered, although, at least in the case of the notice to quit, the tenant alleges that there were people home all day that day. .

Similarly, the summons and complaint were also left leaning against the doorknob of the apartment door. Abode service made to an outside door or common hallway rather than the apartment itself has been held invalid. See, e.g., Laurel Estates v. Moore, 1984 WL 255914 (attaching process to outside door of garden apartment using rubber band is insufficient for abode service); and Sousa v. Canzanella, No. SPNH 8112-461, Housing Digest, New Haven #17 (Superior Court Housing Session, 1981) (service to common hallway insufficient to constitute abode service).

Because compliance with the notice to quit requirement is a jurisdictional necessity to a proper summary process action, a plaintiff's failure to satisfy the prescribed notice requirements renders the court without subject matter jurisdiction to hear the case. Lampasona v. Jacobs, 209 Conn. 724, 728-729, 733 (1989). Similarly, failure to comply with statutory requirements for service of the summons and complaint deprives the Court of jurisdiction.

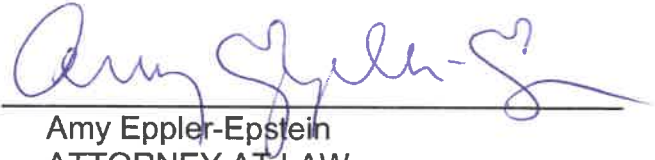
In the present case, since proper abode service was not made of either the notice to quit or the summons and complaint pursuant to Conn. Gen. Stat. §47a-23(c) and §52-57, this court is without subject matter jurisdiction to entertain this summary process action and the action should be dismissed.

CONCLUSION

Since the court lacks jurisdiction, this action should be dismissed.

SANDRA JEAN-CLAUDE ET AL
THE DEFENDANTS

BY:



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ASSOCIATION, INC.
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NEW HAVEN, CT 06510
JURIS NO. 305401
TEL: (203) 946-4811

CERTIFICATION

This is to certify that on ^{20th} ~~the~~ day of January, 2023, a copy of the foregoing
was mailed, postage pre-paid, to Atty. Eliana Schachter, Weisman Law Firm
LLC, 25 Central Ave., PO Box 260, Waterbury, CT 06702.



Amy Eppler-Epstein